

REPORT OF INVESTIGATION
2010-0492

**INVESTIGATION INTO THE
OFFICE OF THE CHIEF FINANCIAL OFFICER'S
LOTTERY CONTRACT AWARD,
THE COUNCIL OF THE DISTRICT OF COLUMBIA'S
APPROVAL OF THE LOTTERY CONTRACT AWARD, AND
THE ENACTMENT OF THE LOTTERY MODERNIZATION
AMENDMENT ACT OF 2010**

I. INTRODUCTION

On July 21, 2010, the District of Columbia Office of the Inspector General (OIG) received a letter from the then Attorney General for the District of Columbia and the then Chief Procurement Officer, D.C. Office of Contracting and Procurement (OCP), requesting an investigation into: the award of Contract No. CFOPD-09-C-013 for a new gaming system; the approval of the contract by the Council of the District of Columbia (Council); and the capability of the contractor that secured the bid.

Subsequently, on September 6, 2011, a D.C. councilmember requested that the OIG include in its investigation of the lottery contract an examination of the circumstances and propriety surrounding the adoption and/or implementation of games of chance and games of skill played via the Internet (iGaming) in the District.

During the investigation, OIG investigators received additional information and/or allegations of supposed impropriety concerning: the Office of the Chief Financial Officer's (OCFO) first attempt to award the lottery contract in 2008; the reasons for the Council's disapproval of OCFO's first attempt to award the lottery contract; a councilmember's conduct during a meeting with officials from the 2008 lottery contract award recipient; a councilmember's and his aides' conduct with respect to drafting legislation legalizing online gambling; the outside employment of two councilmembers creating possible conflicts of interest in light of their legislative conduct; and the Department of Small and Local Business Development (DSLBD) improperly denying a bidder's application to become a Certified Business Enterprise (CBE) during the OCFO's second attempt to award the lottery contract in 2009, resulting in that bidder not receiving CBE preference points.

These requests and the receipt of subsequent, related information raised questions about the integrity of the lottery contract award, the process by which the District became the first jurisdiction in the United States to legalize online gaming, and multiple councilmembers' conduct with regard to both issues. Accordingly, the OIG initiated a review of the 2008 lottery contract award, the 2009 lottery contract award, approval, and execution, and the enactment of the Lottery Modernization Amendment Act of 2010.

II. SCOPE OF INVESTIGATION

A. Investigative Synopsis

The activities subject to this investigation occurred over approximately a 3½-year period, from May 2007 to December 2010. OIG investigators interviewed employees of OCFO, OCP, the Office of the Attorney General for the District of Columbia (OAG), and the Council. OIG investigators also interviewed the: Vice President for Government Relations, Intralot, LLC (Intralot); Vice President/Chief Operations Officer (COO), Veterans Service Corporation (VSC)¹; owners of W2 Tech LLC (W2 Tech); owner of LSG Strategies; and a longtime District civic activist.

In addition, OIG investigators reviewed OCFO's contracting and procurement authority, the Council's contract approval authority, and procurement documents related to the 2008 lottery contract award to W2I² and the 2009 Intralot lottery contract award, approval, and execution. OIG investigators also reviewed copies of: VSC's DSLBD certification file; Intralot and VSC's Business Relationship Formation Agreement; Intralot's subcontract with DC09, LLC (DC09);³ Digidoc Inc.'s (Digidoc) DSLBD joint venture application to certify D.C. Lottery Partners as a CBE; and audio recordings of the Small and Local Business Opportunity Commission (SLBOC) hearings regarding Digidoc's appeal of DSLBD's decision to deny its joint venture application.

Further, OIG investigators reviewed electronic mail (email) pertaining to the lottery contract and the Lottery Modernization Amendment Act of 2010, as well as video footage of the Council's April 7, 2008, December 16, 2008, November 24, 2008, and December 1, 2009, hearings on the lottery contract award and approval process. Finally, OIG investigators reviewed articles from various news outlets including *The Washington Times*, *The Washington Post*, *Washington Examiner*, and the *Washington City Paper*.

Based on the requests from the former Attorney General and the councilmember, and information acquired in the course of the investigation, the OIG examined the following issues:

1. Whether the lottery contract should have been returned to the contracting officer for further action when the Council became aware that Intralot was adding major players to the team, especially since the contracting officer had not been informed of the change in team composition, and had not had an opportunity to review the impact of the change on the evaluation and ranking of the offerors;

¹ VSC's initial filings with the District listed the COO as the company's "Chief Executive Officer (CEO)/Vice President". During DSLBD's CBE certification process, VSC amended its application changing his title from CEO to COO. Currently, on VSC's website he is listed as VSC's President/COO.

² W2I was a joint venture between Intralot and W2 Tech.

³ DC09 is a joint venture between Intralot and VSC.

2. Whether the contracting officer conducted a sufficient responsibility assessment of Intralot, VSC, and DC09 after becoming aware of the subcontracting agreement;
3. Whether the circumstances mentioned in recent *Washington Times* articles concerning VSC and its misrepresentations of its business status and its references are supported in fact and if so, require further inquiry by the contracting officer into VSC's capabilities to serve as the Operations Manager for the contract; and
4. Whether councilmembers acted improperly in the Council's review and consideration of either awarding the lottery contracts or drafting and enacting online gambling.

B. Timeline of Significant Events

2007

- May 23 – OCFO issues a Request for Proposals (RFP) for the D.C. Lottery and Charitable Games Control Board (DCLB) gaming system platform (Solicitation No. CFOPD-07-R-053).
- June 29 – W2Tech formed in the District of Columbia.

2008

- January 24 – OCFO awards lottery contract to W2I.
- March 3 to December 16 – Mayor submits W2I contract to Council for approval and withdraws submission on the same day. Mayor submits proposed W2I contract to Council for approval three more times, each time withdrawing the submission prior to the expiration of the 45-day approval period.
- November 14 – Mayor submits fifth and final proposed W2I contract to Council for approval.
- December 16 – Council votes to disapprove W2I contract.

2009

- February 6 – OCFO issues RFP for DCLB gaming system platform (Solicitation No. CFOPD-09-R-013).
- June 15 – VSC formed in the District of Columbia.
- June 17 – Digidoc submits joint venture application to DSLBD for CBE certification of D.C. Lottery Partners.

- June 26 – DSLBD grants D.C. Lottery Partners provisional certification.
- July 16 – DSLBD Notice of Decision denying D.C. Lottery Partners joint venture certification.
- August 3 – Digidoc appeals DSLBD Notice of Decision to SLBOC.
- August 7 – VSC applies to DSLBD for CBE certification and requests certification for three lottery industry NIGP codes and one telecommunications management code.
- August 26 – DSLBD staff conduct VSC site visit and determine that: VSC is not qualified for four NIGP code certifications; VSC did not meet requirement for local business enterprise; they are not able to determine VSC eligible for CBE certification. Staff recommends that VSC take additional time to structure and organize acceptable office location for all staff.
- August 28 – DSLBD approves VSC's CBE certification, to include the three lottery industry NIGP codes.
- September 29 – OCFO awards lottery contract to Intralot.
- October 19 – Mayor submits Intralot contract to Council for approval.
- October 27 – SLBOC hearing and decision to overturn DSLBD decision. SLBOC approved D.C. Lottery Partners joint venture certification.
- October 29 – OAG submits to SLBOC Motion to Set Aside Decision from SLBOC October 27 hearing.
- November 10 – Second SLBOC hearing. D.C. Lottery Partners did not receive notice of the hearing and did not attend.
- November 23 – Intralot and VSC execute Business Relationship Formation Agreement contingent on Council approval of lottery contract award to Intralot.
- December 1 – Council approves lottery contract award to Intralot.
- December 8 – SLBOC issues Denial of Appeal of DSLBD's denial of D.C. Lottery Partners joint venture certification.

2010

- January 1 – Intralot executes subcontractor agreement with DC09 to perform work under the lottery contract.
- January 19 – Intralot and VSC incorporate DC09 in Delaware.

- February 25 – OCFO letter to Intralot reminding Intralot that it is responsible for executing the terms of the lottery contract as well as the terms of the subcontracting agreement with DC09.
- March 29 – DC09 registers with the District to conduct business as a foreign limited liability corporation.
- May 25 – CFO memorandum to a councilmember expresses concerns with legality of implementing iGaming and potential violations of 31 USC § 5361 (Prohibition on Funding Unlawful Internet Gambling) and 15 USC § 1171 (Transportation of Gambling Devices).
- Dec. 1, 2009 – March 30 – Sometime between these dates, OCFO adds B-On system as an offered option to Intralot lottery contract.
- March 30 – OCFO executes Intralot lottery contract, which includes B-On system and implementation contingent upon determination that games offered under B-On platform are legal, or after legislation enacted to legalize online gaming in the District.
- November 23 – the Fiscal Year 2011 Supplemental Budget Support Act of 2010, which includes the Lottery Modernization Amendment Act of 2010, is introduced at the request of the Mayor. A councilmember sponsors the Lottery Modernization Amendment Act of 2010 (iGaming).
- December 7 – Council’s first reading of the Fiscal Year 2011 Supplemental Budget Support Act of 2010, including the Lottery Modernization Amendment Act of 2010.
- December 17 – Attorney General letter to Chairman of the Council expresses concerns about legality of online gaming under certain federal anti-gambling laws, implementation challenges, and lack of public hearings on the issue.
- December 21 – Lottery Modernization Amendment Act of 2010 enacted with the passage of the Fiscal Year 2011 Supplemental Budget Support Act of 2010. Sponsoring councilmember votes for the legislation.

III. FINDINGS

A. OCFO’s 2008 Lottery Contract to W2I

1. The OCFO Contract/Procurement Process

On May 23, 2007, OCFO issued a RFP, Solicitation No. CFOPD-07-R-053 (RFP-1), seeking a contractor to provide the DCLB with a new gaming system platform under a multiyear contract.

OCFO received two proposals in response: one from W2I and one from Lottery Technology Enterprises (LTE).⁴

W2I was a joint venture comprised of Intralot and W2 Tech. Intralot, incorporated in Greece, is one of three major lottery vendors worldwide (the other two are GTECH Corporation and Scientific Games Corporation). According to its website, Intralot supplies integrated gaming and transaction processing systems, innovative game content, sports betting management, and interactive gaming services to state-licensed gaming organizations worldwide. Its North American subsidiary is Intralot USA. In the course of its investigation, the OIG learned that to bid on the District's lottery contract, Intralot USA formed Intralot DC LLC, a Delaware company. W2 Tech is owned by a husband and wife and the husband's father, who formed W2Tech in the District of Columbia on June 29, 2007, for the purpose of bidding on the lottery contract. Based on Intralot's recommendation, W2 Tech hired two individuals as W2 Tech's Vice President of Operations and Vice President of Marketing, respectively, because of their lottery industry experience.

LTE is a joint venture between GTECH and New Tech Games. GTECH, which manages many state lotteries throughout the United States, is a gaming technology and services company based in Providence, Rhode Island. On August 29, 2006, GTECH became a wholly owned subsidiary of Lottomatica, the license holder for the Italian National Lottery. New Tech Games Inc. is a District owned and operated corporation.

OCFO convened a seven-member Source Selection Evaluation Board (SSEB) to evaluate the proposals. The SSEB gave W2I's proposal a score of 3,279.7 and LTE's proposal a score of 2,612.5. On January 24, 2008, OCFO determined that W2I had the best offer and selected it to be awarded the lottery contract (W2I lottery contract).

The then Mayor submitted the proposed W2I lottery contract to the Council for approval a total of five times. According to the then Attorney General, on March 3, 2008, the proposed W2I lottery contract was submitted but immediately withdrawn that same day because of a typographical error in the contract package. The OIG also was informed that the second, third, and fourth contract submissions each were submitted and then withdrawn as the 45-day approval period neared expiration, to prevent the contract from being disapproved because of the Council's failure to act on it. After the fifth submission, on December 16, 2008, the Council voted to disapprove the lottery contract (Council Contract No. CA17-672).⁵ Eight councilmembers voted against the contract and five voted in favor of it.

2. Contract Process

During the Council approval process, W2I hired the Owner/Political Relations Strategist of the Baker Wright Group and Intralot hired the Owner/Political Strategist of LSG Strategies, as lobbyists. The lobbyists arranged for W2I executives to meet with councilmembers, individually, in an effort to persuade them to vote in favor of the contract. The meetings were held with several councilmembers to discuss W2I's capabilities and to address council-

⁴ LTE held the lottery contract for more than 25 years (1982 to 2007). Its last renewal period expired in November 2009.

⁵ See December 16, 2008, Council Public Hearing, Legislative Session, Committee of the Whole.

members' questions or concerns. Those questions or concerns involved, among other things, entities participating in proposed joint ventures just to secure the lottery contract. Also, the OIG received information asserting that, during the meetings, a councilmember made statements, at best, suggesting that he would not vote for the W2I contract because of a dislike for or ill feelings toward certain joint venture participants.

During the course of W2I's meeting with a councilmember, who also chaired the board of a quasi-public entity, the councilmember indicated that he could not or was not inclined to go along with voting for or awarding the lottery contract to W2I because W2I's participating local partner had been awarded a contract with the quasi-public entity. The councilmember told W2I executives that he would support W2I's bid for the lottery contract if its local partner withdrew from the quasi-public entity's contract because he could not give the local partner everything. While the councilmember's action, in his capacity as a councilmember and chairman of the quasi-public entity's board, may give the appearance that he lost complete independence or impartiality, and may have affected adversely the confidence of the public in the integrity of government, the OIG did not find sufficient evidence to support or conclude that the councilmember had acted improperly. Specifically, the OIG finds that the statement attributed to the councilmember, without more, such as some sort of quid pro quo, does not reflect misconduct rising to the level of a violation of a standard of conduct.

The OIG investigation did not substantiate the assertion that the Council disapproved the proposed W2I contract because councilmembers did not particularly like the joint venture participants. It does appear that several councilmembers voted to disapprove the W2I contract because they had concerns about whether W2I had submitted the best offer in terms of the proposed contractor's qualifications and nature of the proposed local business participation. The investigation did reveal that during the attempt to award the W2I contract, officials at the OCFO became aware that the Council had concerns and questions about W2 Tech and the qualifications of some of its joint venture participants. The information indicated that these concerns and questions had been raised with OCFO representatives during meetings with Council staffers (and possibly with councilmembers), as well as during public hearings. Further, during the Council's December 16, 2008, hearing, concerns were voiced regarding whether W2I was a true joint venture, and over the accuracy of the financial statements Intralot had submitted to OCFO.

B. OCFO's 2009 Lottery Contract to Intralot

1. The OCFO Contract/Procurement Process

On February 6, 2009, after the Council disapproved the proposed W2I lottery contract, OCFO cancelled RFP-1. Shortly thereafter, OCFO issued a new RFP, Solicitation No. CFOPD-09-R-013 (RFP-2), seeking a new lottery gaming system, which included lottery software (Base Lottery Software and Application Lottery Software),⁶ lottery network, lottery equipment, and

⁶ According to the RFP, "Base Lottery Software" is the software to be provided by the contractor, including all necessary functionality to meet the DCLB's requirements in a base system and the ability to add new applications for new games. "Application Lottery Software" refers to the games and other applications designed and implemented pursuant to the requirements in the RFP and are intended to be executed in conjunction with the contractor's Base Lottery Software.

any other components that perform all lottery functions. In addition to equipment and software, RFP-2 sought support services for the lottery including technical support, training, marketing, and data; and call center management. The goods and services sought under RFP-2 were divided into 2 categories: "Base System and Services", and "Options". RFP-2 defined Base System and Services only as any and all requirements, goods, and services described in the RFP that were not specified as an "option." Options were described as a system feature or capability that DCLB, at its sole discretion, may have included in or added to the [Base] System. The Options could have had additional costs quoted or included in the baseline price. DCLB made no schedule or quantity commitments for Options.

Through investigation, the OIG learned that Intralot did not intend to bid on RFP-2 because it anticipated that the contract's profit margin would be low. Nonetheless, Intralot decided to bid on RFP-2 because of the prestige it would gain in the international lottery industry if it held the lottery contract for the "capital city" of the United States. OIG investigators learned that before Intralot submitted its proposal, it met with several local businesses that had approached Intralot about partnering to bid on the lottery contract. The businesses told Intralot that it would need a local partner. As a result, Intralot officials met with officials of VSC, which had been formed in June 2009, and proposed to use VSC as a subcontractor to take advantage of VSC's anticipated CBE preferences. However, VSC rejected Intralot's proposed business arrangement.

Three bidders submitted proposals in response to RFP-2: Metropolitan Games, D.C. Lottery Partners, and Intralot. Metropolitan Games was a joint venture between Scientific Games Corp. and a local partner. Scientific Games Corp. is a New York City-based company that provides gaming solutions to lottery and gaming organizations worldwide. Its products include instant lottery games, lottery gaming systems, terminals and service, and Internet applications. D.C. Lottery Partners was a joint venture comprised of GTECH, Digidoc Inc. (Digidoc), and D.C. Gaming Advisors, LLC (DGA). Digidoc, a District CBE, is a local professional services and IT solutions firm that specializes in document management and conversion. Intralot submitted its bid without a local partner.

**a. DSLBD Denied Digidoc Joint Venture Certification / DSLBD
Granted VSC CBE Certification**

During the summer of 2009, both Digidoc and VSC submitted applications to DSLBD for certification. DSLBD denied Digidoc's application, but approved VSC's application.

With respect to Digidoc's application, on June 17, 2009, Digidoc submitted a joint venture application to DSLBD requesting CBE certification for D.C. Lottery Partners. Initially, DSLBD granted provisional certification to the joint venture. A month later, on July 16, 2009, DSLBD denied the joint venture certification.

At the time Digidoc submitted its joint venture application, D.C. Municipal Regulations (DCMR), 27 DCMR §817⁷(a)(8) required that the joint venture agreement provide that the local business enterprise participant would exercise more than 50% of the control over contract performance, including the manner in which contract specifications would be completed, day-to-

⁷ Title 27 DCMR § 817 was amended in October 2009 and recodified as 27 DCMR § 811.

day operations would be carried out, personnel decisions would be made, employees would be managed, and equipment and goods necessary to perform the contract would be purchased. In addition, 27 DCMR §817(d) required that the joint venture applicant demonstrate that the local business enterprise participant had the competence and expertise necessary to perform the contract in connection with which the applicant sought certification, but lacked the necessary capacity to independently perform the contract due to factors which may include inadequate financial or technical resources or an inability to secure sufficient bonding.

DSLBD determined that Digidoc would be unable to exercise more than 50% of the control over the contract's performance because, based on the OCFO's evaluation criteria, Digidoc would perform less than 5% of the contract. DSLBD also determined that even the 5% of the contract that Digidoc was to perform was related to support services and not the more critical functions. In addition, DSLBD determined that Digidoc was unable to demonstrate that it had the competence and expertise necessary to perform the contract, but lacked the capacity to do so independently. DSLBD based this determination on the fact that DSLBD previously had not certified Digidoc as capable of performing the National Institute of Governmental Purchasing (NIGP) industry codes necessary to perform any other contract's technical factors, and Digidoc had not applied for any certification upgrades. Furthermore, DSLBD determined that Digidoc did not have the competence and expertise necessary to perform even the work for which it would be responsible because GTECH first had to train Digidoc. Therefore, DSLBD reasoned, even if Digidoc had hired an additional individual⁸ to work on the contract, that individual's experience would not provide Digidoc with the competence and expertise necessary to perform the contract independently.

The OIG found, however, that DSLBD erred in its determinations. A review of the joint venture agreement reveals that it required Digidoc to exercise more than 50% of the control over the Contract performance. The D.C. Lottery Partners Joint Venture Agreement specifically stated that Digidoc would have "exercised 51% or more of the control over [c]ontract performance in the areas of [c]ontract specifications to be completed, day-to-day operations, [personnel] decisions, management of employees, and the purchase of supplies, materials, and equipment." In addition, Digidoc would have selected and appointed, from its employees, the joint venture's key executives and management staff, who would have been responsible for exercising control over contract performance. Furthermore, the Joint Venture Labor and Profit Breakdown and Work Performance schedule submitted with the joint venture's application indicated that Digidoc would have been responsible for project administration. Therefore, the joint venture agreement met the requirements of 27 DCMR §817(a)(8).

Regarding whether Digidoc demonstrated that it had the competence and expertise necessary to perform the lottery contract, from the OIG standpoint, the mere lack of a previous certification for NIGP codes related to the lottery industry is insufficient to determine that Digidoc did not have the requisite expertise or competence. According to Digidoc, the NIGP codes for which DSLBD previously certified Digidoc and the experience it gained from servicing the District and federal governments (while not lottery specific) evidenced that its capabilities were both relevant

⁸ According to Digidoc's joint venture application and DSLBD's Notice of Denial, Digidoc informed DSLBD that it intended to hire this individual, and he intended to accept employment with Digidoc, if the joint venture was awarded the lottery contract.

and transferable to the performance of the work for which it was to be responsible under the lottery contract. Further, Digidoc's application showed that it lacked the technical resources specific to the lottery industry. The lack of technical resources specific to the lottery industry dictates the need for a joint venture because Digidoc did not have the necessary capacity to perform the contract independently, which was part of the statutory requirement. Therefore, based on all of the above, the OIG finds that DSLBD improperly denied Digidoc's application for a joint venture certification.

On August 3, 2009, Digidoc appealed DSLBD's decision to SLBOC. On October 27, 2009, SLBOC held a hearing on the matter. At the conclusion of the hearing, SLBOC orally overturned DSLBD's decision and approved the joint venture application. On October 29, 2009, OAG filed a Motion to Set Aside Decision. Subsequently, on November 10, 2009, SLBOC held a second hearing to consider OAG's Motion to Set Aside Decision. At the conclusion of the hearing, SLBOC granted OAG's motion, and on December 8, 2009, denied Digidoc's appeal and affirmed DSLBD's July 16, 2009, decision.

D.C. Lottery Partners testified under oath during the Council hearing that it was not notified of the second hearing, and, therefore, was not present and did not provide testimony in response to OAG's motion.⁹ Similarly, the OIG found no evidence to indicate that Digidoc was given the opportunity to respond to OAG's Motion to Set Aside Decision. Therefore, Digidoc was denied due process and SLBOC's subsequent denial of the joint venture application was improper.¹⁰

With respect to VSC, in August 2009, 2 months after Digidoc submitted its joint venture application to DSLBD, in its application, VSC requested CBE certification and certification for a number of NIGP codes including: 578-53-00 (Lottery Equipment and Supplies), 578-53-50 (Lottery Machines), 958-66-00 (Lottery Management Services), and 958-89-00 (Telecommunications Management Services).

On August 26, 2009, as part of DSLBD's CBE certification process, two DSLBD compliance specialists, conducted a site visit of VSC's principal office, 724 Mississippi Avenue, S.E. According to the Site Visit Report, 724 Mississippi Avenue, S.E. is the VSC President's private home. VSC's office was located in the family room of the house. Besides home furniture "including a television, sectional sofa, family photos, and other personal items," the only business equipment in the room were two Dell desk top computers, two wooden desks, one HP all-in-one printer, and two executive chairs. During the site visit, the specialists spoke with VSC's then President and its COO. VSC's Executive Vice President was not present. The COO primarily worked from his Burtonsville, Maryland home or in the field, occasionally coming into the District office. The specialists found no evidence during the site visit of bookkeeping and other record keeping, payroll maintenance, receipt of business telephone calls and telephones, receipts evidencing payment of telephone services by VSC, or VSC stationery bearing the District address.

⁹ See November 24, 2009, Committee of the Whole and Finance and Revenue Committee joint hearing.

¹⁰ The OIG also received information that a member of the SLBOC board, who voted in favor of granting OAG's motion during the November 10, 2009, hearing, possibly had a conflict of interest. However, because the OIG determined that the SLBOC's denial of the joint venture application was improper for other reasons, the allegation was considered moot and not meriting further inquiry.

After conducting the site visit and reviewing the VSC COO's résumé and that of a VSC employee who was a former Director of the Florida State Lottery, the specialists concluded that VSC did not qualify for the four NIGP codes. In addition, the specialists determined that VSC did not meet the requirements for a local business enterprise (required for CBE certification) because VSC's COO, did not maintain his office at the business' District office as required. They did note that VSC's President and Executive Vice President were both District residents and maintained their office at the District office. The specialists ultimately concluded that they were not able to determine VSC's eligibility for CBE certification in accordance with the definition of a local business enterprise, regarding the requirement that the highest level managerial employees maintain their offices and perform their managerial functions in the District. They recommended that VSC take additional time to structure and organize an acceptable office location for all employees.

Nonetheless, on August 28, 2009, a former DSLBD compliance manager approved VSC's CBE certification, which included the three NIGP lottery industry codes. The compliance manager noted that, "The two majority owners are residents of the District. D.C. Code § 2-218.31 (Local business enterprises) states, in part, a business enterprise shall be eligible for certification as a local business enterprise if, [among other things], the business enterprise requires that its chief executive officer and the highest level managerial employees of the business enterprise maintain their offices and perform their managerial functions in the District." Accordingly, based on the foregoing, the VSC COO would be required not only to perform his functions in the District, but also to maintain his office in the District. Thus, in light of the fact that the VSC COO appears to have maintained his office in and worked out of Maryland, VSC did not satisfy the requirements to be certified as a local business enterprise under District law.

b. OCFO's Responsibility Assessment of Intralot

OCFO conducted a responsibility determination of Intralot in September 2009.¹¹ The OCFO contracts director told OIG investigators that during the procurement process, OCFO reviewed Intralot's Dun and Bradstreet (D&B) report, past performance, previous experience, and the résumés of its key personnel. The OCFO also checked to ensure that Intralot had not been debarred from contracting with and had no outstanding debt with either the District or federal governments. In addition, the OIG found that during both attempts to award the lottery contract, DCLB determined that Intralot had the required technical capabilities to perform the work. Therefore, OCFO's responsibility to assess Intralot was satisfied.

c. OCFO's Responsibility Assessment of VSC and DC09

VSC is the local partner in the joint venture created with Intralot (the contractor) to perform the contract. As the contractor, Intralot was responsible for ensuring that VSC and the joint venture subcontractor (DC09) met the responsibility criteria under D.C. Code §2-353.01.

¹¹ The OIG notes that Intralot's District corporate status was revoked in September 2009 for failure to file its biannual report for 2009. Its corporate status was reinstated in November 2011. There is no rule or regulation that invalidates a District contract where the entity's corporate status has been revoked after the business has been vetted.

An OCFO Contracting Officer told OIG investigators that contracting officers are responsible for vetting the prospective contractor. Usually, subcontractors are not vetted as part of the contracting process because, as here, subcontractors are rarely identified in bid proposals. However, both the OCFO Contracting Officer and the OCFO Director of Contracts told OIG investigators that even though it was not required, OCFO decided to vet VSC once it became aware that Intralot had partnered with VSC to form DC09, with the intention of subcontracting the lottery work to DC09. OCFO obtained VSC's D&B report and checked to ensure that it was not on the federal or District debarment lists. Because VSC was a newly formed business, it had no previous record of performance to assess. However, by the time OCFO performed its responsibility determination, VSC was a CBE, even though the DSLBD compliance specialists and compliance manager differed in their determinations regarding whether VSC met the requirements for CBE certification, and at the time of DSLBD's site visit (4 months prior to Intralot deciding to partner with VSC to create DC09), VSC did not appear to be a fully functioning business.

OCFO also reviewed one of VSC's executive's résumé¹² and determined that he had general management experience.¹³ Neither VSC nor the executive had experience in the lottery industry. However, OCFO reviewed another VSC executive's résumé and determined that she had executive level experience in the lottery industry. In performing its responsibility assessment of DC09, OCFO also reviewed the Business Relationship Formation Agreement between Intralot and VSC that formed DC09. OCFO also reviewed the subcontract agreement between Intralot and DC09. Because DC09 was created to perform the lottery contract work, it had no history of previous performance for OCFO to review. In a February 25, 2010, letter to Intralot, OCFO reiterated that Intralot "shall remain responsible for the execution of the requirements of [the contract] and the execution of the subcontracting agreement." Therefore, the contracting officer's responsibility to assess DC09 was satisfied and the Determination of Contractor Responsibility was sufficient to meet the requirements of D.C. Code §§ 2-353.01 and 2-353.02. The OIG cannot determine whether OCFO's responsibility assessment would have resulted in a different determination if OCFO had been aware of the discrepancies surrounding VSC's CBE certification.

d. VSC's Alleged Misrepresentations

OIG investigators reviewed *The Washington Times* articles alleging that VSC had misrepresented its previous work experience on its website. OIG investigators questioned VSC's COO about the Construction and Construction Management Capability Statement that was posted on VSC's website indicating that the company had worked on several federal government construction projects. The COO acknowledged that VSC, which did not exist during the time periods of these construction projects, did not work on them. The COO explained that these

¹² The executive's résumé lists several management positions with Fannie Mae. OIG investigators confirmed the executive's Fannie Mae work history.

¹³ OCFO officials determined that the executive had gained management experience during his employment with Fannie Mae. In addition, they found that he had managed several business ventures, some of which were successful and some of which failed.

construction projects had been included in the company's capability statement not as a description of VSC's past performance, but to showcase the construction industry experience of VSC personnel, who had worked on these projects in connection with previous employment.

The OIG was unable to determine whether this information was posted on VSC's website at the time OCFO vetted VSC, or, if it was, whether OCFO was aware of it. VSC's COO told OIG investigators that none of these construction projects were included in the background information VSC provided to OCFO or DCLB during VSC's vetting process. OIG investigators reviewed the materials submitted to OCFO and DCLB during VSC's vetting process and verified that they did not include information regarding these construction projects. Therefore, there was insufficient evidence that OCFO considered the construction projects in determining VSC's capability to perform the lottery contract.

2. Contract Approval

OCFO convened an SSEB, which was comprised of three of the evaluators from RFP-1's SSEB, to evaluate the proposals. The SSEB gave Intralot's proposal a score of 94, D.C. Lottery Partners' proposal a score of 84, and Metropolitan Games' proposal a score of 77. OCFO determined that Intralot's bid was the best offer (gaming library, marketing and research strategy, technology). The OCFO Director of Contracts told investigators that because of the issues experienced in the first attempt to award the lottery contract, OCFO hired an independent consultant during the second attempt to review the vendor proposals and OCFO's contract award process for compliance and sufficiency. The OCFO Director of Contracts said that the independent consultant concurred with Intralot's selection. On October 19, 2009, the former Mayor submitted the proposed Intralot lottery contract to the Council for approval.

During the Council approval process, OCFO and Intralot representatives met with councilmembers in an effort to persuade them to approve the lottery contract. During those visits, several councilmembers expressed concern that Intralot lacked a local business partner. And, through investigation, OIG investigators learned that before Intralot submitted its proposal, it met with several local businesses that had approached Intralot about partnering to bid on the lottery contract. The businesses informed Intralot that it would need a local partner to win the bid. As previously noted, after meeting with the VSC COO, Intralot proposed to use VSC as a subcontractor in order to take advantage of VSC's CBE preferences. No partnership ensued at that time. However, in the course of the investigation, the OIG acquired information that, purportedly, due to feedback from the Council that Intralot would need to secure a local partner if it wanted Council's approval, VSC and Intralot established a partnership in November 2009, when Intralot executed a Business Relationship Formation Agreement with VSC to form DC09.

Through its investigation the OIG determined that prior to the Council's approval, Intralot disclosed to OCFO and the Council that it intended to partner with VSC to form a joint venture, to which it intended to subcontract the lottery contract work. Notwithstanding the disclosure, in December 2009, the Council approved the lottery contract. On January 1, 2010, Intralot entered into a subcontractor agreement with DC09 for the purpose of performing the work under the lottery contract. On January 19, 2010, Intralot and VSC incorporated DC09 in Delaware. On March 29, 2010, DC09 registered with the District as a foreign limited liability company.

a. No Additional OCFO Contract Review After Intralot Partners with VSC

After the OCFO learned that Intralot planned to subcontract the lottery work, it assessed the capabilities of VSC's key members who would make up DC09's executive staff. It appears that if OCFO had concerns about Intralot's intention to subcontract the lottery work or the capabilities of the subcontractor, it could have withdrawn the contract from the approval process. Alternatively, OCFO could have exercised its continuous right to approve or reject any employee or subcontractor by rejecting VSC, DC09, or any key employee. OCFO continued to recommend the lottery contract's approval.

The Council approved the lottery contract without returning it to the contracting officer, even after it became aware of Intralot's intentions. According to a former OCP Chief Procurement Officer, to have, as in this case, the prime contractor create a separate entity and give this entity, which had not been introduced either in the bid proposal or during the bid evaluation processes, a "material responsibility" in the performance of the contract, is an "anomaly" in government contracting. Yet, based on its review, the OIG was unable to find any requirement that the Council return the lottery contract to the contracting officer for further action.

Furthermore, the District contracted with Intralot to perform the lottery contract. Notwithstanding Intralot's intent to subcontract the work to DC09, which appears to be permissible, Intralot remained solely responsible for executing the contract requirements. The former Chief Procurement Officer also agreed with this position. Intralot's Vice President for Government Relations told OIG investigators that it was his understanding that the Council wanted Intralot to have local business participation in the lottery contract. This was communicated to him by a councilmember and an OCFO representative. The Intralot Vice President for Government Relations told OIG investigators that Intralot based its decision to subcontract the lottery work on these representations of the Council's desire to for local business participation in the lottery contract. Intralot was to be a major participant in DC09's management in that two of DC09's three managing board member positions were to be filled by Intralot employees. Further, DC09 was required to use Intralot's technology.

In addition, the Council held a joint committee hearing to review the lottery contracting process. During the hearing, the Council heard testimony and questioned representatives of Intralot, VSC, OCFO, the DSLBD, and DCLB prior to approving the lottery contract award to Intralot. Based on all the above, the OIG finds that it was appropriate for the Council to approve the lottery contract award to Intralot.

3. Contract Execution – B-On System Added to Intralot Contract

Between the time the Council approved the lottery contract in December 2009 and OCFO executed the lottery contract in March 2010, OCFO added to the contract a couple of Intralot's Offered Options, including the B-On system (a gaming system that allows games of skill and games of chance to be played over the Internet). However, RFP-2 had not identified (as a requirement) a gaming platform capable of implementing games of skill and games of chance played on the Internet, either as part of the Base System or an Option. When OCFO decided to include the B-On system in the lottery contract, it materially changed the contract requirements.

Under DCLB procurement regulations, 30 DCMR § 2317.1, it appears that the contracting officer must issue a written amendment to the RFP if the agency increases or otherwise changes its requirements after receipt of the proposals from the bidders

It appears that even though the Council already had approved the lottery contract, OCFO should have issued a written amendment to RFP-2 identifying a gaming platform capable of implementing games of skill and games of chance played on the Internet as a requirement. OCFO should have issued the amendment to Intralot, D.C. Lottery Partners, and Metropolitan Games, to allow them to submit a best offer and final offer. Furthermore, Intralot's B-On system was not listed in the proposed lottery contract OCFO submitted and the Council approved. OCFO added the Offered Options section to the lottery contract after the Council's approval. Consequently, it appears that OCFO executed the contract without adhering to procurement regulations and, as a result, may not have received the best price for the District.

C. The Lottery Modernization Amendment Act of 2010 – iGaming Legalized

In the course of its investigation, as noted above, the OIG received information of possible conflicts of interest of councilmembers with respect to drafting or sponsoring legislation and conducting hearings due to their outside employment.

With respect to drafting or sponsoring legislation, based on and in the course of its investigation, the OIG determined that after the Council approved the Intralot contract, a councilmember and his staff began drafting legislation to legalize iGaming within the District. After reading a news article that discussed the potential revenue generated by offshore gaming via the Internet, the councilmember wanted legalized iGaming in the District and took steps to sponsor such legislation. His staff researched the possibility of adding iGaming to the District's lottery, by contacting various individuals and organizations (i.e., legal professionals and the American Games Association) for guidance and legal opinion. According to the councilmember, once it became known that he intended to sponsor a bill proposing iGaming in the District, he and his staff began receiving unsolicited advice and information from various sources including Intralot. He also received legal analyses to support legalized iGaming in the District. The councilmember told OIG investigators that after considering the information received during their research, he and his staff decided that the easiest and simplest way to legalize iGaming in the District would be to define "lottery" and include iGaming in the definition in the legislation.

Through its investigation, the OIG found that at the same time he and his staff were drafting legislation for iGaming, the councilmember also worked as a federal sector lobbyist at a law firm. According to the law firm's website, the firm, among other things, counseled clients in the gaming industry. As a law firm employee, the councilmember lobbied on behalf of the firm's public body and corporate clients.¹⁴ The OIG investigation revealed that GTECH Inc., a gaming technology and services company, was one of the law firm's clients. The councilmember told OIG investigators that he knew that the law firm had a gaming practice but he had no interaction with the gaming practice. He also told OIG investigators that he knew that GTECH was one of the firm's clients. The councilmember told OIG investigators that he reported to the D.C. Office of Campaign Finance his outside income from outside employment.

¹⁴ The councilmember reported his income from the law firm to the D.C. Office of Campaign Finance.

Though the Office of Campaign Finance does not require councilmembers to report the source of the earnings, the amount of income that the councilmember stated he earned from the law firm is consistent with the amount reported to the Office of Campaign Finance. The councilmember further told OIG investigators that when he sponsored the Lottery Modernization Amendment Act of 2010, he did not notify the Council that his law firm had a gaming practice. The councilmember further acknowledged that he did not notify the law firm that he was sponsoring the Lottery Modernization Amendment Act of 2010.

Because of his sponsorship of iGaming legislation and employment at a law firm that has a gaming practice, there is a suggestion of a possible conflict of interest that the councilmember is using his public office for private gain. While the better course of action might have been for the councilmember to alert the Council that his firm had a gaming practice and his law firm that he was sponsoring iGaming legislation, or to seek an interpretive opinion from the Council's Office of the General Counsel or the D. C. Office of Campaign Finance, so that all parties would have the appropriate information beforehand and act accordingly, if necessary, the OIG found no evidence that the councilmember lobbied or received anything on behalf of any gaming entity, or did anything improper which resulted in the Council voting for the legislation. The OIG finds that the mere fact that a legislator who is associated with an entity that provides or performs work in a subject area that may be the subject of possible legislation under consideration by such legislator, in and of itself does not constitute a use of public office for private gain. Similarly, the OIG notes and finds that the holding of public hearings on the District's lottery that merely inquire into the status of the lottery and iGaming contracts by a councilmember who chairs a Council committee that oversees the DCLB, and is of Counsel with a law firm that has gaming clients, does not constitute or rise to the level of constituting a conflict of interest.

The CFO and the former Attorney General both expressed concerns about the legality of internet gambling especially in light of the federal statutes of 31 USC §§ 5361-5367 (Prohibition on Funding of Unlawful Internet Gambling) and 15 USC §§ 1171-1178 (Transportation of Gambling Devices). In a December 2010 letter to the former Chairman of the Council, on which he copied all the members of the Council, the former Attorney General addressed, "the very real legal and law-related technological obstacles that stand in the way of the District's enjoying any influx of revenue from the new on-line gaming," and pointed out that "no consensus exists on whether the proposed on-line gaming would be legal under certain federal anti-gambling laws." He further added, "the District's unique geographical characteristics pose gaming-related implementation challenges that, in turn, raise potential legal problems."

On December 21, 2010, the Council approved the Fiscal Year 2011 Supplemental Budget Support Act of 2010 enacting the iGaming legislation (codified at D.C. Code § 3-1313, Operation of Lottery).

ANALYSIS AND CONCLUSIONS

1. Whether the lottery contract should have been returned to the contracting officer for further action when the Council became aware that Intralot was adding major players to the team,

especially since the contracting officer had not had an opportunity to review the impact of the change on the evaluation and ranking of the offerors.

Based on the foregoing, the OIG finds that the Council was not required to return the lottery contract (as submitted to the Council for approval) to the contracting officer for further action, when the Council became aware that Intralot was adding major players to the team, even though the contracting officer had not had an opportunity to review the impact of the change on the evaluation and ranking of the offerors. However, from the OIG's standpoint, the relevant authorities appear to indicate that when the B-ON system was added to the contract after Council approval, its inclusion, in effect, changed the contract requirements in a material fashion. Therefore, OCFO should have amended the RFP and allowed the three bidders to resubmit a best and final offer. Once the new bids were received and processed by OCFO, the selected contract should have been submitted to the Council for review and consideration.

2. Whether the contracting officer conducted a sufficient responsibility assessment of Intralot, VSC, and DC09 after becoming aware of the subcontracting agreement.

Based on the evidence and information acquired in the course of the investigation and reflected herein, the OIG finds that the contracting officer's responsibility assessments of the entities met the requirements of D.C. Code §§ 2-353.01 and 2-353.02, by, among other things: reviewing Intralot and VSC's Dun and Bradstreet report and the resumes of key personnel; reviewing Intralot's past performance and previous experience; and checking to ensure that Intralot had not been debarred from contracting with and had no outstanding debt with either the District or federal governments.¹⁵

3. Whether the circumstances mentioned in recent *Washington Times* articles concerning VSC and its misrepresentations of its business status and its references are supported in fact and if so, require further inquiry by the contracting officer into VSC's capabilities to serve as the Operations Manager for the contract.

Based on the evidence and information acquired in the course of the investigation and reflected herein, the OIG finds that, even though the purported misrepresentations largely were substantiated, there was insufficient evidence that OCFO was aware of the misrepresentations, let alone considered them, in determining VSC's capability to perform the lottery contract. Therefore, from OIG's standpoint, no further inquiry by the contracting officer into VSC's capabilities to serve as the Operations Manager for the contract was required because OCFO had considered the qualifications of the executives as part of its review.

4. Whether councilmembers acted improperly in the Council's review and consideration of either awarding the lottery contracts or drafting and enacting online gambling legislation.

¹⁵ Because VSC and DC09 were newly formed businesses, they had no previous performance record to assess.

As stated above and for the reasons indicated above, the OIG found insufficient evidence to conclude that councilmembers acted improperly and violated standards of conduct in the Council's review and consideration of either the awarding of the lottery contracts or drafting and enacting of online gambling.

ACTIONS TAKEN

Recommendations referred to Kwame R. Brown, Chairman, D.C. Council; Natwar M. Gandhi, Ph.D., Chief Financial Officer, OCFO; Clifford D. Tatum, Executive Director, Board of Elections and Ethics; and Harold B. Pettigrew, Jr., Director, DSLBD. This Report of Investigation also was provided to Buddy Roogow, Executive Director, DCLB.

RECOMMENDATIONS

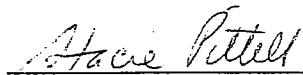
The OIG recommends the following:

1. The Council consider clearly defining the purpose for its contract review and approval process and developing specific written procedures governing such review, and the applicable criteria for such, inclusive of the prohibition, if deemed appropriate, of subsequent contract modifications not specifically approved by the Council.
2. The Council should consider whether legislation is needed to address concerns that it may have with particular contracting methods, procedures, and the like with respect to the performance of its role in the contract review and/or approval process, and whether such reviews and/or approvals are better conducted by it exercising its legislative powers through the promulgation of law and policy, rather than nullifying the results of the competitive bid process.
3. With the current emphasis on ethics with respect to councilmembers, the Council and BOEE should assess or, at a minimum, may want to consider, whether existing codes of ethics for the Council and its employees provide adequate guidance to councilmembers, including a delineation of prohibited conduct, when performing duties concerning review and approval of contracts; and sponsorship and/or drafting of legislation, or whether a separate or revised code of ethics is needed.
4. With respect to outside employment, the Council should consider requiring councilmembers to report, with specificity, the amount and source of income received from outside employment in their financial disclosure filings with appropriate District entities.
5. OCFO should develop clear guidelines and regulations, among other things, that require submission to the Council for review and approval, any modifications or adjustments to contracts that the OCFO is processing and that the Council is required to approve, prior to effectuation of the contract. Further, OCFO should refrain from including an Offered

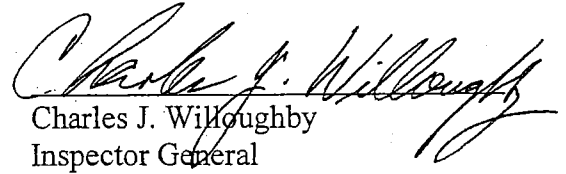
Option in a contract award unless the Request for Proposals was amended to reflect the change in requirements produced by the inclusion of such an option and distributed to all bidders in accordance with existing regulations.

6. DSLBD should develop clear guidelines and regulations that ensure uniform certification for the CBE program and NIGP industry codes. Further, DSLBD determinations as to CBE status should include details regarding its compliance review process and the basis for its final determinations, especially where the final determination contravenes the compliance specialists' findings.

Report Approved by:



Stacie Pittell
Assistant Inspector General
for Investigations



Charles J. Willoughby
Inspector General

Date of Approval: 1/20/12